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October 23, 2017

Via Certified Mail - Return Receipt Requested

Mr. Ed Galligan
Executive Director
Port of Olympia
606 Columbia St NW, Ste 300
Olympia, WA 98501

RECEIVED ON:

OCT 25 2017

ORC

EPA Region 10

Office of the Regional Administrator

Re: **SUPPLEMENTAL NOTICE OF INTENT TO SUE UNDER THE CLEAN
WATER ACT**

Dear Mr. Galligan:

The purpose of this letter is to provide the Port of Olympia with supplemental notice to Waste Action Project's original Notice Letter dated April 3, 2017. This letter is to provide you with sixty days notice of Waste Action Project's intent to amend its Complaint filed in the citizen suit against you (Case No. 3:17-cv-05445-BHS, W.D. Wash. June 12, 2017) under section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the additional violations described below.

I. ILLICIT AND PROHIBITED DISCHARGES

As described in the original Notice Letter, for its Ocean Terminal, the Port of Olympia was granted coverage on January 1, 2010 under the Washington Industrial Stormwater General Permit ("IGSP") issued by the Washington State Department of Ecology ("Ecology") on October 21, 2009, effective January 1, 2010, modified May 16, 2012, effective July 1, 2012, and set to expire on January 1, 2015, under NPDES Permit No. WAR001168 (the "2010 Permit"). Ecology granted subsequent coverage under the current iteration of the ISGP, issued by Ecology on December 3, 2014, effective January 2, 2015, and set to expire on December 31, 2019 (the "2015 Permit") and maintains the same permit number, WAR001168.

Condition S5.E of the 2010 and 2015 ISGP (collectively "Permits") prohibits illicit discharges. Appendix 2 to the Permits defines "illicit discharges" as "any discharge that is not composed entirely of stormwater." Condition S5.F of the Permits requires Port of Olympia to manage stormwater to prevent the discharge of synthetic, natural or processed oil or oil containing products as identified by an oil sheen, and trash and floating debris, prohibiting those discharges.

Port of Olympia's discharges of bark violate these Permit conditions. Port of Olympia generates discharges of bark during loading and offloading of lumber from ships. These

discharges of bark occur each and every day over the last five years on which the Port of Olympia loaded or offloaded lumber from a vessel and are reasonably likely to continue to occur.

Condition S7.B.3.b of the Permits also requires Port of Olympia to eliminate illicit discharges within 30 days of discovery; and Condition S3.B.4.b.i.7 of the Permits require Port of Olympia's SWPPP to include measures to identify and eliminate illicit discharges to surface waters. Port of Olympia violated these requirements by failing to eliminate its illicit discharges of bark altogether over the last five years and failing to include measure to identify and eliminate illicit discharges in its SWPPP.

Additionally, Condition S7.B.3.a of the Permits requires Port of Olympia to notify the Department of Ecology within seven days of any discovery of an illicit discharge. Port of Olympia violated this requirement by failing to notify Ecology about its illicit discharges of bark within seven days of each occurrence over the past five years.

II. UNPERMITTED DISCHARGES

The Permits authorize only the discharges of stormwater and pollutants contained in stormwater. Defendant does not possess and has never possessed an NPDES permit for its non-stormwater direct discharges of bark to Budd Inlet. The point sources of illicit discharges of bark at Port of Olympia's facility include any machinery used to load and offload lumber from ships and the facility itself. These point source discharges violate the Clean Water Act's Section 301(a), 33 U.S.C. § 1311(a), prohibition on pollutant discharges because they are authorized by no NPDES permit. Violations of Section 301(a) are violations of "effluent standards or limitations" under Section 505(f), 33 U.S.C. § 1365(f). These violations occurred each and every day over the past five years on which Port of Olympia loaded or offloaded lumber from ships.

The above-described violations reflect those indicated by the information currently available to Waste Action Project. These violations are ongoing. Waste Action Project intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Supplemental Notice of Intent to Sue.

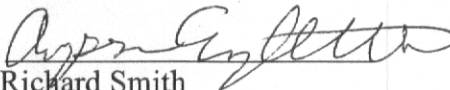
Pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a), and 40 C.F.R. § 19 and 19.4, each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day for each violation for violations committed through November 2, 2015 and up to \$52,414 per day for each violation committed thereafter. In addition to civil penalties, Waste Action Project will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Waste Action Project believes that this SUPPLEMENTAL NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to amend the Complaint in the citizen suit against Port of

Olympia (Case No. 3:17-cv-05445-BHS, W.D. Wash. June 12, 2017) under Section 505(a) of the Clean Water Act for violations.

Very truly yours,

SMITH & LOWNEY, PLLC

By: 
Richard Smith
Alyssa Englebrecht

cc: Scott Pruitt, Administrator, U.S. EPA
Michelle Pirzadeh, Administrator, Region 10 U.S. EPA
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